
HOUSE BILL No. 1116

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: IURC enforcement authority. Repeals current provision granting the utility regulatory commission (IURC) enforcement powers over utilities and replaces it with provision authorizing the IURC to impose civil penalties of up to \$25,000 on public utilities for violations of or noncompliance with utility statutes, rules, and orders. Requires the civil penalties to be: (1) deposited in the commission public utility fund account; (2) refunded directly to customers; or (3) awarded to another utility harmed by the violation or noncompliance. Authorizes the IURC to order a utility to provide service in emergency situations. Authorizes the IURC to require a public utility to post a reasonable performance bond before operating.

Effective: July 1, 2002.

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January 8, 2002, read first time and referred to Committee on Commerce, Economic Development and Technology.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1116

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-115.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]: **Sec. 115.5. (a) As used in this section, "account" refers to**
4 **the commission public utility fund account established under**
5 **IC 8-1-6.**

6 **(b) As used in this section, "order" means:**

- 7 **(1) a decision;**
8 **(2) a decree;**
9 **(3) a demand;**
10 **(4) a determination;**
11 **(5) a direction;**
12 **(6) an order;**
13 **(7) a requirement; or**
14 **(8) a rule;**

15 **of the commission.**

16 **(c) As used in this section, "utility" means:**

- 17 **(1) a public utility over which the commission has**



jurisdiction; or

(2) the department of public utilities created under IC 8-1-11.1.

(d) The commission may issue an order under subsection (e) only if it finds, after notice and hearing, that a utility has:

(1) violated a provision of this title;

(2) failed to comply with an order; or

(3) failed to comply with an administrative rule adopted by the commission under this title.

(e) After making a finding under subsection (d), the commission may issue an order that does one (1) or more of the following:

(1) Imposes a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation or noncompliance found under subsection (d). For purposes of this subdivision, each day that a violation or noncompliance occurs is a separate violation or noncompliance.

(2) Orders a utility to cease and desist from a violation or noncompliance found under subsection (d).

(3) Mandates corrective action by a utility to alleviate a violation or noncompliance found under subsection (d).

(4) Revokes or modifies the terms of a utility's:

(A) certificate of territorial authority;

(B) certificate of public convenience and necessity; or

(C) other permit issued by the commission.

(f) The commission shall consider the following when determining the amount of a civil penalty:

(1) The size of the utility.

(2) The gravity of the violation or noncompliance found under subsection (d).

(3) The good faith of the utility in remedying the violation or achieving compliance after receiving notice of a violation or noncompliance under subsection (d).

(g) This section does not apply to a violation or noncompliance found under subsection (d) that was the result of the following:

(1) Customer provided equipment.

(2) The negligent act of a customer.

(3) An emergency situation.

(4) An unavoidable casualty.

(5) An act of God.

(h) The attorney general shall bring an action to enforce an order of the commission under subsection (e).

(i) Civil penalties under this section are cumulative. A suit for

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recovery of a civil penalty does not affect:

- (1) the recovery of another civil penalty or forfeiture for a separate violation or noncompliance; or
- (2) a criminal prosecution against:
 - (A) a public utility;
 - (B) an agent, a director, an employee, or an officer of a public utility; or
 - (C) any other person.

(j) The secretary of the commission shall direct that a civil penalty collected under this section be distributed as follows:

- (1) A penalty assessed for a violation that directly affects ratepayers must be refunded directly to the customers of the violating utility in the form of a credit on customer bills.
- (2) A penalty assessed for a violation that directly harms another utility must be awarded directly to the other utility.
- (3) A penalty assessed for a violation that does not directly affect ratepayers or harm another utility must be deposited into the account.

(k) The commission shall use penalties deposited into the account for:

- (1) consumer education;
- (2) promotion of utility competition; or
- (3) any other purpose considered by the commission to further the public interest.

The commission shall report to the regulatory flexibility committee the distribution of deposits under this section.

(l) Penalties deposited into the account may not be included in:

- (1) the calculation of the difference between actual expenditures and appropriations described in IC 8-1-6-1(b); or
- (2) any public utility fee credit.

SECTION 2. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 128. (a) As used in this section, "utility" means:

- (1) a public utility over which the commission has jurisdiction; or
- (2) the department of public utilities created under IC 8-1-11.1.

(b) If the commission:

- (1) determines that the provision of utility service is necessary to:
 - (A) prevent injury to a person; or

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1 **(B) alleviate an emergency; and**
 2 **(2) directs a utility to provide utility service;**
 3 **the utility shall provide utility service within twenty-four (24)**
 4 **hours after receiving direction from the commission.**

5 **(c) Each day that a utility fails to comply with a direction under**
 6 **subsection (b) is considered a separate violation for purposes of**
 7 **imposing a civil penalty under section 115.5 of this chapter.**

8 SECTION 3. IC 8-1-2-129 IS ADDED TO THE INDIANA CODE
 9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2002]: **Sec. 129. The commission may require a public utility to**
 11 **post a reasonable performance bond as a condition of the public**
 12 **utility's operation in Indiana. The amount of the reasonable**
 13 **performance bond may not exceed two million dollars (\$2,000,000).**

14 SECTION 4. IC 8-1-6-2 IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2002]: **Sec. 2. (a) All fees herein prescribed**
 16 **shall be paid into the treasury of the state of Indiana through the**
 17 **secretary of the commission and quietused into an account to be known**
 18 **as the commission public utility fund account. This account shall be**
 19 **used for enforcing the provisions of IC 8-1-1 and IC 8-1-2 and shall be**
 20 **utilized only for the purpose of funding the expenses of the commission**
 21 **and the consumer counselor in amounts not in excess of their**
 22 **respective appropriations by the general assembly, plus the contingency**
 23 **fund. All appropriations under this chapter paid out of the commission**
 24 **public utility fund account shall be subject to the prior approval of the**
 25 **general assembly, the governor, and the state budget agency.**

26 **(b) The secretary of the commission shall deposit into the**
 27 **account the following:**

28 **(1) Fees collected from municipalities under IC 8-1-2-85. shall**
 29 **also be deposited in the commission public utility fund account;**
 30 **as if they were fees collected from public utilities under this**
 31 **chapter.**

32 **(2) Civil penalties collected under IC 8-1-2-115.5.**

33 SECTION 5. IC 8-1-2-115 IS REPEALED [EFFECTIVE JULY 1,
 34 2002].

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